

FEDERAL PUBLIC DEFENDER
District of Hawaii

Alexander Silvert
First Assistant Federal Defender

300 Ala Moana Boulevard, Suite 7-104
Honolulu, Hawaii 96850-5269

(808) 541-2521 ♦ Facsimile (808) 541-3545 ♦ Toll free (877) 541-2521

October 20, 2006

Abraham Martin
87158-022
FPC Lompoc
3705 West Farm Road
Lompoc, CA. 93436

Re: Appeal

Dear Mr. Martin:

The reason you must claim ineffective assistance of counsel is because you have lost your right to file a direct appeal - since none was filed within 10 days of your sentencing or the date of your judgement, whichever was later. Since no appeal was filed, you cannot now file a direct appeal at all. Instead, you must file a habeas corpus petition. Ameline and Booker do not permit you to file an out-of-time appeal as "plain error" deals with the question of the standard of review on appeal, not whether a defendant filed a timely appeal or not.

The same is true of the language you cite - "unpreserved error." That deals with the fact that the Court will reverse a sentence on Booker grounds even if no objection was made below - but does not deal with appeals filed after the 10 day time limit.

Without any further discussion as to the merits of your claim, you must first address how you intend to get the issue before the Court. In that regard, since your 10 day limit for filing a direct appeal has long since passed, you must find another avenue. The only avenue I can think of is a habeas corpus petition. It is, however, your decision as to how you wish to proceed and you should not consider my remarks as either controlling or authoritative: All I am saying is that my office cannot and will not file a notice of appeal at this time.

I am happy to inform you that the bail lien against your house should be lifted by next week. The paperwork has now been filed with the Clerk's Office and once we get it back, we will have to record it in the city and county office. We will pay the \$25 filing fee to expedite the filing of these documents.

Sincerely,

Alexander Silvert

ALEXANDER SILVERT
First Assistant
Federal Public Defender
District of Hawaii

EXHIBIT " F "